

NEW ENGLAND BOARD OF HIGHER EDUCATION

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September 12, 2016

Secretary James Peyser and Senator Michael Moore
Special Commission on Interstate Reciprocity Agreements

Re: Testimony in Support of SARA

Dear Secretary Peyser and Senator Moore,

On behalf of the New England Board of Higher Education (NEBHE), thank you for accepting our testimony regarding the importance and relevance of SARA to Massachusetts students and institutions.

Background of SARA:

In 2010, the U.S. Department of Education articulated that each state is responsible for authorizing education offered to its residents from institutions outside the state. This regulation had major implications: institutions of higher education would have to initiate an expensive and time-consuming process to request authorization from each state by submitting an application to deliver distance education. Furthermore, states faced the prospect of requests from thousands of institutions.

Subsequently, accreditors, government agencies and higher education organizations proposed a nationwide reciprocity agreement to address these challenges. The State Authorization Reciprocity Agreement, or SARA, is designed to:

- Broaden offerings and lower costs for students;
- Save institutions from seeking approvals for their classes and degree programs on a case-by-case, state by state, basis;
- Allow states to focus on oversight of their own institutions.

SARA, a nationwide agreement

SARA requires each participating accredited, degree-granting institution to be authorized by its home state and eliminates the need for an institution to obtain individual approvals in all of the states where it serves students.

Currently, 44 states and territories have joined the SARA agreement, a figure that has more than doubled since January 2015. More than 1000 institutions are participating in SARA, with more institutions joining every week. There is support for SARA throughout all 54 states and territories, and by the end of 2016, it's projected that there will be a minimum of 47 states participating in SARA.

As proposed, SARA can, over time, make state authorization policy and regulatory mechanisms more consistent across the states, regions and the nation.

SARA is built on three partnerships:

- Among states as reciprocal partners

- Among the four regional compacts for higher education, and
- Among nationally recognized accreditors, the federal government and the states.

This three-way collaboration has traditionally worked well to assure students of quality, accountability and consumer protection.

Consistent with their collaborative missions to expand educational opportunity within their regions, the four regional higher education interstate compacts are uniquely positioned to assist on this issue. In addition to NEBHE, the compacts include the Midwestern Higher Education Compact (MHEC), the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE). Interstate recognition within a region also extends to all participating states regardless of region.

A voluntary agreement

SARA establishes reciprocity between willing member states that accept each other's authorization of accredited institutions to operate in their states to offer educational services beyond state boundaries. Trust becomes a guiding principle for a state authorization reciprocity agreement – and requires confidence that each partner take seriously its responsibilities to authorize only institutions that provide high quality education, whether through traditional campus classroom experiences or through technology-mediated or off-campus based experiences. Participation in this agreement is entirely voluntary. This agreement is intended to facilitate expanded access to high-quality distance education opportunities for students by improving state policy and operational mechanisms.

This agreement applies only to educational services provided by institutions outside of their home state boundaries. It in no way affects the unique processes that states may use to authorize an institution to operate or to exempt an institution from oversight within its own state.

Participation at the institution level is voluntary as well. Institutions that do not wish to subject themselves to the level of oversight consistent with interstate reciprocity may choose either not to provide educational services beyond the boundaries of their state or to seek separate authorization to operate in states in which they wish to offer educational services.

Benefits of reciprocity

Significant benefits will accrue to institutions, states and students if the current lack of uniformity in the patchwork of state regulation can be improved through sharing common, consistently applied processes and standards.

Institutions will reap financial benefits by no longer having to engage in the confusing and duplicative process of seeking approval to operate on an individual, case-by-case basis in each state in which they serve students.

States will benefit by focusing their limited resources on the oversight of institutions within their state, regardless of where that institution serves students. As the number of institutions serving students in multiple states continues to increase, state regulatory offices would find it difficult to conduct meaningful reviews and ongoing oversight of the hundreds, if not thousands, of out-of-state institutions operating in their states.

Students will benefit because lower costs for institutions will mean fewer costs passed on to them. Some students are finding their options limited as institutions choose not to serve students in states with onerous authorization requirements. Since regulators will focus their reviews on their home-state institutions, they will have more confidence in the review process and that complaints will be handled and resolved properly.

Consumer Protection

The implementation of SARA will strengthen students' legal rights, not diminish their protection. SARA creates a national platform on which States can address student complaints by agreeing to an investigation of a student complaint or any other reciprocity issue from other SARA member states or any SARA regional or national office.

Currently, **Massachusetts** lacks specific standards to regulate online providers without a physical presence in their state. This means that all institutions of higher education, based outside the borders of **Massachusetts** currently have access to students in Massachusetts, without any regulation. By joining SARA, **Massachusetts** would now regulate out of state institutions. All institutions, whether resident in Massachusetts or without, would be subject to a comparable standard of conduct.

Additionally, States that are members of SARA have to report the following information to the NC-SARA on a quarterly basis:

1. The number of complaints from out-of-state students, by institution, appealed to the state's SARA portal agency through the complaint resolution process;
2. The resolution of those complaints in the aggregate, by SARA institution: number resolved in favor of the person making the complaint, number resolved in favor of the institution, number resolved by agreement, and number pending resolution.

All of the student complaint information is publicly available on the NC-SARA website.

It is also important to note that nothing in the SARA Agreement limits or compromises the ability of any state or its authorized entities (including attorneys general) to take action against an institution that it views as violating a state's general laws of consumer protection, and in fact the Agreement specifically affirms the roles of state attorney generals.

Quality Control

Participating institutions agree to follow the Interregional Guidelines for the Evaluation of Distance Education Programs for best practices in postsecondary distance education developed by leading practitioners of distance education and adopted by the Council of Regional Accrediting Commissions. NC-SARA, the regional compacts and participating states also monitor institutional behavior to ensure that such quality-oriented provisions are not used as loopholes to get around SARA's core intent.

Last year the issues regarding Corinthian Colleges were of great concern to many regulators in Massachusetts, and rightfully so. But it was for reasons unrelated to SARA. It is critical to understand that Corinthian Colleges would not have been accepted as a SARA institution. Its financial sustainability scores were unacceptably low. ITT applied for SARA membership and was denied by the State of Indiana, again for reasons of an unacceptable financial sustainability score.

In regards to financial sustainability, SARA uses a uniform standard across the country, that is clear and understandable, already established, well regarded in the community, and reliable in evaluating whether an institution is in significant financial trouble and at risk of closure. The possibility of allowing each SARA state to set its own financial expectations was discussed; that approach was rejected because it would not yield uniform standards, therefore undermining reciprocity. An institution with a composite score of 1.0-1.49 has the opportunity to make the case to its home state that it is nevertheless sufficiently financially stable to justify state approval

to participate in SARA. (The general threshold for the financial soundness requirement is 1.5.)

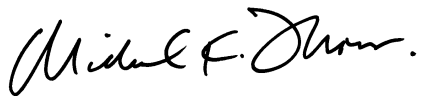
For all of these reasons, NEBHE encourages the **Commonwealth of Massachusetts** to strongly consider legislation permitting the state and its institutions to enter into the State Authorization Reciprocity Agreement. There are currently 44 states and territories enrolled in SARA, including Maryland and Texas and we expect to have close to 47 states by December 2016. We have also been working closely with both New Jersey and New York, states not currently affiliated with a regional compact, as they both passed SARA legislation in 2015.

If there are ways in which NEBHE can assist in Massachusetts's review of SARA policies and procedures, as well as state and institution obligations and implementation, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Sandra J. Doran". The signature is fluid and cursive, with the first name "Sandra" and last name "Doran" clearly legible.

Sandra J. Doran
Senior Director
New England Board of Higher Education

A handwritten signature in black ink, reading "Michael K. Thomas". The signature is fluid and cursive, with the first name "Michael" and last name "Thomas" clearly legible.

Michael K. Thomas
President and CEO
New England Board of Higher Education

Attachment A

Attachment A

Responses to Questions Raised by Members of the Special Commission on Interstate Reciprocity Agreements at the August 29 Commission Meeting

1. Does SARA apply only to programs delivered 100% online?

SARA applies to distance education. Distance education is defined as follows through the SARA Policies and Standards document:

“Distance Education” means: instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs.

2. Does SARA address hybrid courses/programs?

SARA applies solely to distance education activity conducted across state lines. It does not apply to distance education activity of an institution within its home state or to on-ground campuses in any state. For purposes of SARA, “distance education” includes a limited number of group activities conducted for short periods on the ground. If a hybrid course operates in the following manner, it would *not* be covered under SARA:

- a. Establishes a physical location for students to receive synchronous or asynchronous instruction;*
- b. Requires students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;*
- c. Establishes an administrative office;*
- d. Provides information to students for the purpose of enrolling students or provides student support services from a physical site operated by or on behalf of the institution in the state;*
- e. Offers a “short course” that requires more than 20 contact hours in one six-month period;*
- f. Provides office space to instructional or non-instructional staff;*
- g. Maintains a mailing address or phone exchange in a state.*
- h. Carries out field study or field research located at a field station, research station or other physical site at which a faculty member or other institutional employee or contractor supervises or otherwise directs two or more students in an activity exceeding the allowable short course length which either bears academic credit or is a requirement for a course or program.*

3. Does SARA apply to online courses vs. programs?

Yes, see responses to both question one and two.

4. Does SARA apply to MOOCs and non-credit-bearing courses?

SARA covers those portions of such a program that take place via distance education across state lines among SARA member states. SARA covers single courses as well as programs. That includes courses that may not be credit-bearing, as long as an accredited degree-granting institution offers them. Whether the student is degree seeking is irrelevant.

If the course/MOOC is offered by a non-degree granting institution, it is not covered by SARA.

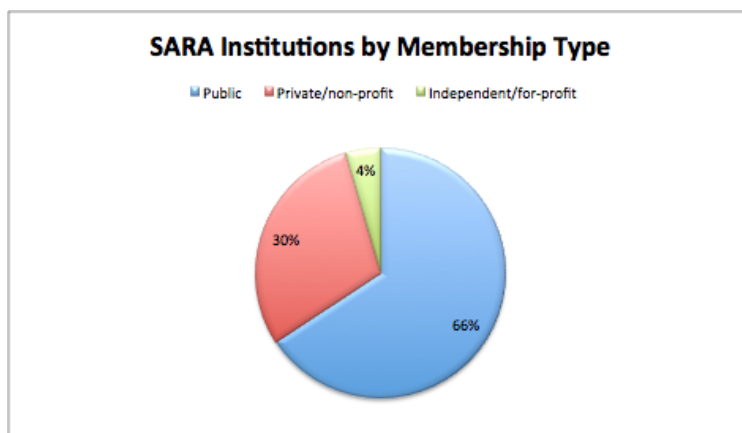
5. What are the standards every institution must meet to become a SARA member?

The institution must demonstrate on an annual basis that it complies with all the standards and requirements of SARA.

- Must be regionally or nationally accredited, and the president or provost must acknowledge that the institution complies with the Council of Regional Accrediting Commissions (C-RAC) Guidelines.
- Must demonstrate adequate consumer protection practices, including student complaint processes.
- Must demonstrate institutional financial responsibility of 1.5 or higher, with limited exceptions.

Please refer to the institutional application form on the NC-SARA website (www.nc-sara.org) for more details regarding specific requirements.

6. What is the percentage breakdown of public, non-profit private and for-profit private institutions?



7. Would Corinthian Colleges have been accepted as a SARA institution?

No, Corinthian Colleges would not have been accepted as a SARA institution, due in part, to its inadequate DOE financial responsibility composite score.

8. Is ITT a SARA institution?

No, ITT is not a SARA institution. It applied for membership and was denied by the State of Indiana's SARA Portal Agency for its inability to meet SARA standards.

9. Status of SARA state membership?

As of Sept. 1, 2016, 44 states and territories are members of SARA. The status of the non-SARA states is as follows:

Connecticut: Legislation was passed July 2016, mandating that Connecticut apply to become a SARA member state prior to Jan. 1, 2017. The state Office of Higher Education is drafting the application.

New York: Enabling legislation was passed in August 2015; regulations are under consideration by the state Board of Regents.

New Jersey: Regulations have been promulgated and are in the public comment period.

Florida: Legislation is expected to pass in 2017, allowing Florida to become a SARA state. Florida is a member of the Electronic Campus of the Southern Regional Educational Board ("SECRE"). SECRE is the regional reciprocity agreement that originated in 1998 and expires in June 2107, to be replaced by SARA.

California: Legislation will be introduced in the next session permitting California to become a SARA state.

Kentucky: Legislation has been passed and the application is expected to be submitted by December 2016.

Pennsylvania: Legislation has passed and the application is expected to be submitted by December 2016.

10. How does the student complaint procedure work under SARA?

The complaint process is detailed in the SARA documents as follows:

- a. Complaints against an institution operating under SARA go first through the institution's own procedures for resolution of grievances.
- b. Complaints regarding student grades or student conduct violations are governed entirely by institutional policy and the laws of the SARA institution's home state.
- c. If a person bringing a complaint is not satisfied with the outcome of the institutional process for handling complaints, the complaint (except for complaints about grades or student conduct violations) may be appealed within two years of the incident about which the complaint is made, to the SARA portal agency in the home state of the institution against which the complaint has been lodged. That agency shall notify the SARA portal agency for the state in which the student is located of receipt of that complaint appeal. The resolution of the complaint by the institution's home state SARA portal agency, through its SARA complaint-resolution process, will be final, except for complaints that fall under the provisions of (g), below.
- d. While the final resolution of the complaint rests with the SARA portal agency in the home state of the institution against which the complaint has been lodged, nothing precludes the state in which the complaining person is located from also working to resolve the complaint, preferably through that state's SARA portal agency. Indeed, it is expected that SARA states will facilitate the resolution of any complaints brought to their attention.
- e. While final resolution of complaints (for purposes of adjudication of the complaint and enforcement of any resultant remedies or redress) resides in certain cases with institutions (complaints about grades or student conduct violations), or more generally with the relevant institution's home state SARA portal agency (all other complaints), the regional compact(s) administering SARA may consider a disputed complaint as a "case file" if concerns are raised against a participating state with regard to whether that state is abiding by SARA Policies and Standards. The regional compact may review such complaints in determining whether a state under its purview is abiding by the SARA standards. Similarly, a complaint "case file" may also be reviewed by NC-SARA in

considering whether a regional compact is ensuring that its member states are abiding by the SARA standards required for their participation in the agreement.

- f. SARA shall develop policies and procedures for reporting the number and disposition of complaints that are not resolved at the institutional level. Such data will create transparency and can be used in determining whether a regional compact is ensuring that its SARA member states and those states' institutions are abiding by the standards required for participation in the agreement.
- g. Nothing in SARA Policies and Standards precludes a state from using its laws of general application to pursue action against an institution that violates those laws.

States are required under the terms of the Unified State Authorization Reciprocity Agreement to report complaint histories to NC-SARA, and as appropriate, to affected accrediting agencies. NC-SARA publishes those complaints and the resolution thereof on the NC-SARA website where it is accessible to everyone.

11. How are students in Massachusetts protected against fraud, predatory practices and misrepresentations today? Will that change under SARA?

Each state is required to have a clearly articulated and comprehensive state process for consumer protection in regard to SARA activities, both with respect to initial institutional approval and ongoing oversight, including the resolution of consumer complaints in all sectors. However, the problem-solving methods need not be identical for all institutions, as different boards or agencies may be involved depending on the nature of the problem, but the authority of the state to resolve complaints related to SARA activity must be substantively the same for all institutions.

SARA consumer protection provisions require the home state, through its SARA “portal” entity or agency, to investigate and resolve allegations of dishonest or fraudulent activity by a provider, including the provision of false or misleading information. This does not diminish the authority of the state attorney general.

The State Attorney General maintains all its current responsibilities and authority to enforce the laws of the state. Section 7.2.2 (7) of the Unified Agreement states the following:

General-purpose laws enforced by state, tribal or federal law enforcement agencies shall not be affected or superseded by any provisions of SARA.

12. How does SARA protect students?

SARA promotes quality and national consistency in authorization and provides national and regional platforms for institutions to address the changing landscape of distance education. Because SARA also shifts principal oversight responsibilities from the state in which the distance education is being received to the “home state” of the institution offering the instruction, the host state (where the student resides) can work more efficiently to resolve problems.